

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3139 OF 2006

Mr. Farid Kasim Sawail Applicant

Versus

The State of Maharashtra Respondent

Mr. Iqbal Y. Solkar, Advocate for the Applicant

Mr. S.R. Shinde, APP for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : 29TH AUGUST, 2006

JUDGMENT

1) Rule. Learned A.P.P. waives service. Taken up for hearing forthwith. The Applicant is an accused in Criminal Case No. 37 of 2005 pending in the Court of the learned Judicial Magistrate First Class, Murud, District Raigad. The Respondent-State has examined five witnesses. An application was made before the Trial Court at Exhibit 21/D by the Applicant for recalling Prosecution Witness No. 1 and 2 for further cross examination on the ground that the earlier Advocate appointed by the Applicant has not properly cross examined the said witnesses. The learned Trial

Judge rejected the application by Order dated 8th June 2006. A Revision Application preferred by the Applicant for challenging the order of the Trial Court has been rejected on the ground that the same was not maintainable.

2) After having perused the application made by the accused and the order dated 8th June 2006, I find that this was a fit case where power under Section 311 of the Code of Criminal Procedure, 1973 ought to have been exercised by the Trial Court. Power under Section 311 of the Code can be exercised at any stage of the proceedings. In my view, application at Exhibit 21/D deserves to be allowed. However, the cross examination of the P.W. 1 and P.W. 2 will be restricted to two medical operations / surgeries allegedly undergone by P.W. 1 as mentioned in Revision Application filed in the Sessions Court.

3) Hence, I pass following order:

O R D E R

(i) Order dated 8th June 2006 passed below Application at Exhibit 21 in Regular Criminal Case No. 37 of 2005 is quashed and set aside.

(ii) P.W. 1 and P.W. 2 examined by the Respondent-State be recalled to enable the Advocate for Applicant to cross examine the said witnesses. The cross-

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examination shall be limited as mentioned in Paragraph
no. 2 above.

(iii) It is made clear that the Applicant will not
seek any adjournment on any unreasonable ground.

(iv) Rule is accordingly made absolute in above
terms.

(ABHAY S. OKA, J.)